IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.809 of 2003
IN
FIRST APPEAL NO.1212 OF 2005.

M/s.Saatal Kattha & Chemicals Ltd ..Applicant

Versus

Vasant Moreshwar Lokhande ..Respondent

WITH

CIVIL APPLICATION NO.808 of 2003
IN
FIRST APPEAL NO.1213 OF 2005.

M/s.Saatal Kattha & Chemicals Ltd ..Applicant

Versus

M/s.Vijay Saw Mills ..Respondent

Mr.S.S.Deshmukh i/b. R.A.Thorat for Applicant

Mr.J.A.Udaipuri i/b. M/s. Udaipuri & Company for the Respondent.

CORAM: S.B.MHASE &
S.R.SATHE, JJ.

DATE : 18th July, 2005

P.C.

1. Heard Mr. Deshmukh for the Applicant and Mr. Udaipuri for the Respondent.

2. In First Appeal No.1212 of 2005 there is a decree for Rs.12,93,239/-, whereas in First Appeal No.1213 of 2005 there is a decree for Rs.25,52,366/-.

Thus the total decree passed against the present Appellant is Rs.37,45,605/-.

3. These are the applications for interim stay for the execution of the impugned decrees in both the Appeals. In fact, this amount of the goods is supplied by the Respondent viz. Khaira Wood. The grievance of the Appellant is that the Khaira wood supplied was not of the quality as per the order, and therfore the payment has not been made. However, it transpires that after the receipt of the goods, part of the goods have been used in the manufacturing process by the Appellant. If the goods were not of the required quality, the Appellants should not have used the goods at all and shall have kept it ready for delivery. Therefore, we, prima facie do not find a case for grant of stay.

4. The learned Counsel for the Appellant, submitted that the Appellant is having approximately a claim of Rs.3,60,000/- and Rs.1,25,000/- (totalling to Rs.4,85,000/-) respectively in both the suits, which is reflected in the written statement filed in both the suits from which the present appeal arises.

5. The learned Counsel for the Respondent

submitted that those amounts are not due amounts, but are being claimed by way of damages, that cannot be said to be counter claim.

6. Let the fact be as it is, it is a matter to be considered at the time of final hearing. At this stage we only take into consideration that the Appellant is claiming Rs.4,85,000/-, therefore, we are inclined to grant stay in both the decrees to the effect of Rs.4,00,000/- only. The stay in respect of rest of the amount involved in both the decrees is hereby rejected.

7. Both the Civil Applications are disposed off accordingly.

(S.R.SATHE, J.) (S.B.MHASE,J.)